WILLIAM F. WAGNER.

[To accompany bill H. R. No. 712.]

JANUARY 16, 1857.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the memorial of William F. Wagner and the accompanying papers, have had the same under consideration, and now report:

The petitioner, William F. Wagner, was marshal of the United States for the eastern district of Louisiana in 1847. Whilst holding that office, a suit was instituted in the district court of that district by the United States against a quantity of timber alleged to have been illegally cut by trespassers on the lands of the United States, and an order for the sequestration of the timber was issued by the district court, commanding him to take the timber in question into his keeping.

In obedience to this order of the court, the petitioner went into the district of country in which the timber was situated and seized it. This seizure was made at a distance of one or two hundred miles from the city of New Orleans; and it became his duty, under the law in force, to provide for its safe keeping, and to protect it from being carried off by those who had cut it. He therefore put a keeper in charge of the property, who continued in charge of it from the 16th of June, 1847, to the 29th of January, 1848, amounting to two hundred and twenty-eight days, for which he paid him at the rate of $2 50 a day. This payment is shown by the receipt of the keeper; and the sum so paid, together with the fees due the marshal, amounted to the sum of six hundred and sixty-six dollars. The account presented was certified by the district judge to have been examined and approved.

In the latter part of the year 1847, a suit was brought by the United States against the schooner Renaissance and cargo. The schooner was seized by the marshal under the authority of the court, and was condemned and sold. The costs and various expenses incurred in the course of the proceedings, for the sale, &c., amounted to $533 35, which was paid out of the proceeds of the property sold; but, upon an appeal to the circuit court, the decree of the district court was reversed condemning the vessel and cargo, and the marshal was compelled to pay the amount he had received over to the claimants.

These claims were presented to the Navy Department, but were not paid, as there were no funds under the control of that department to pay. They were then referred to the Interior Department. There was some inclination there to regard them as payable out of the judici-

ary fund, and they were sent to the Comptroller's office. The Comptroller did not think that they could be paid out of the judiciary fund, but would require for their payment the intervention of Congress. In the report from his office, which is among the papers before the committee, the Comptroller expresses doubts as to the propriety of allowing the amount paid to the keeper who had charge of the timber seized by the United States, as cut upon the public land, without proof of the necessity for that service and of its reasonableness. He also expressed doubts whether the marshal ought not to be required to have recourse upon the captors who libelled the Renaissance and her cargo.

Your committee are of opinion that the claims ought to be paid. The correctness and reasonableness of the charges in the timber case are certified to by the district judge. In the case of the Renaissance and cargo, the correctness of the account is certified by the district judge, and the disbursement of the amount is established by the oath of the marshal. When a public officer employs his own money in defraying expenses incurred in proceedings had at the instance of the United States, he certainly ought to be repaid, without being burdened with the task of seeking payment from third parties, (as in the case of the Renaissance,) who might possibly have been compelled to make the payment if the court had not neglected to perform its duty, as suggested by the Comptroller.

Your committee, therefore, report a bill for the relief of Mr. Wagner, and recommend its passage.

THE UNITED STATES, *vs.* A LOT OF TIMBER. } *United States District Court.—No.* 6388.

Received January 29, 1848, from W. F. Wagner, United States marshal, five hundred and seventy dollars for keeping in the above case, from June 16, 1847, to date inclusive—say two hundred and twenty-eight days, at $2 50 per day.

$570 00. JOHN EVANS.

THE UNITED STATES, *vs.* A LOT OF TIMBER. } *In the United States District Court for the District of Louisiana.—No.* 6388.

"This was a civil suit, instituted by the district attorney, claiming as the property of the United States a lot of timber, cut upon the public lands of the United States in Louisiana."

1847.

June 5.—Writ of sequestration	$2 00
Petition $2; Monition $10	12 00
Mileage to make seizure and take possession, four hundred miles	40 00
Mileage of keeper, four hundred miles	40 00
June 17.—Notice of trial	2 00
	96 00

1848.

January 29.—Paid keeper of said timber from the day of sequestration, June 16, 1847, to January 29, 1848, inclusive, two hundred and twenty-eight days, at $2 50 per day..... $570 00

Amount of marshal's fees..... 666 00

Stated by

W. F. WAGNER,
United States Marshal.

Examined and approved:

THEO. H. McCALEB,
United States Judge.

On the 29th February, 1848, the district attorney, by instructions from the Secretary of the Navy and from the Solicitor of the Treasury, discontinued the proceedings in this matter, and the property was unconditionally restored to the claimants.

W. F. WAGNER,
Late United States Marshal.

—

District of Louisiana:

I, W. F. Wagner, marshal of the United States for the district of Louisiana, being duly sworn, do depose and say: That all the services charged in the following bill of costs, have been actually and necessarily performed, as therein charged, and that the disbursements therein charged have been by me actually paid, and the sums charged as fees are such as are allowed by the statutes of the United States, or by the statutes of the State of Louisiana, as I sincerely believe to be true.

W. F. WAGNER,
Late United States Marshal.

Subscribed and sworn before me this —— day of May, 1850.

THEO. H. McCALEB,
United States Judge.

I, Theodore H. McCaleb, judge of the United States district court for the eastern district of Louisiana, do hereby certify that I have carefully examined the items charged in the following bill of costs, and that they are such as are authorized by the statutes of the United States, or by the statutes of the State of Louisiana, and are strictly conformable to law, and that such services were necessary and proper in the said cause.

THEO. H. McCALEB,
United States Judge.

THE UNITED STATES *vs.* SCHOONER RENAISSANCE AND CARGO. } *In the United States District Court, District of Louisiana.—No. 6427. Prize of war.*

1847.		
December 6.—Admiralty warrant $2, and libel 50 cents		$2 50
Monition		10 00
Mileage to execute warrant		1 00
December 7.—Serving libel		2 00
December 8.—Writ of arrest for witness		2 00
Conveying prisoner before United States commissioner		1 00
Discharging prisoner on bail		50
Mileage to arrest witness, two expenses of guard		2 00
December 9.—Towage across the river		5 00
Paid expenses of removing vessel		8 00
December 24.—Towage from Point to McDonoughville		15 00
Paid for unbending sails, &c		7 00
Proclamation of vessel and cargo		60
Inventory of vessel and cargo		10 00
Paid for discharging cargo		10 00
December 30.—Paid for pilotage of vessel over the bar		24 50
Paid for towage from sea		100 00
1848.		
February 2.—Three notices to appraisers of vessels and cargo.		3 00
Paid appraisers' and umpire's fees, $5 each		15 00
February 12.—Rule		50
February 14.—*Venditioni exponas* of vessel		2 00
February 21.—Notice of trial		2 00
February 28.—Paid for bringing cargo across the river		20 00
Paid for labor and drayage, &c., on cargo		10 00
Advertising sale of vessel—		
Paid "Bee," French and English	$12	
Paid "Delta" in English	6	
		18 00
Commissions on sale $600		13 75
March 6.—Paid for keeping and guarding vessel and cargo to the 6th March, 1848—ninety-one days, at $2 50 per day		227 50
April 28.—Rule		50
May 25.—Order of court to release cargo from seizure		50
Paid proctor's fee		17 00
May 12.—Order of court		50
June 16.—Citation of appeal to circuit court		2 00
		533 35

This amount was deducted from the proceeds of property seized in the above case, and sold by virtue of a writ of *venditioni exponas* from the United States district court; but subsequently an appeal was

taken to the United States circuit court, the decision of the district court reversed, and the marshal ordered to pay said proceeds over to claimants; which he did, as the whole will appear from copies of orders annexed, and the receipt of the proctors for claimants.

W. F. WAGNER,
Late United States Marshal.

In an adjustment of the account of expenses of courts of William F. Wagner, late marshal for the district of Louisiana, (No. 103, 451,) the following were refused to his credit, and the reasons given in the statement of differences as follows, viz:

"Costs taxed paid Thomas J. Durant, attorney, four cases, $17 each, all prize cases, not payable out of judiciary fund, (apply to Secretary of the Navy,) $68.

"Marshal's costs in suit United States *vs.* schooner Renaissance, prize of war, (apply to Secretary of Navy,") $533 35. A

Paid Thomas J. Durant six fees of $17 each in prize cases, not payable out of judiciary fund, (apply to Navy Department,) $102.

Marshal's costs—United States *vs.* Joseph Bell et al. Explanation required as to character, &c., of suit, $6 70. A

Abstract of costs district court, February term, 1847; bill No. 38—Suit against a "lot of timber." The charge of $570 for keeping the timber is so large, that some explanation should be afforded respecting it as to the necessity of incurring the expense, and the reasonableness of the charge. It should also be approved by the Secretary of the Navy. The whole amount of the bill is now withheld from his credit—$666. A

The vouchers for these sums appear to have all been returned to the marshal, with the Comptroller's letter advising him of the adjustment.

On the 1st of June, 1852, the Secretary of the Navy wrote to the Comptroller as follows, viz:

"In the account of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana, presented for allowance, are the following vouchers, which appear to me to be chargeable to the 'judiciary' fund, and are therefore referred to you for such action as may be deemed proper.

" Attorney's fees United States *vs.* schooner Yucateco and cargo, (prize,) $17.

"Attorney's fees United States *vs.* schooner Monteguna, $17.

"In these cases the captured property was condemned and sold, and the costs were chargeable upon the proceeds, as in all prize cases where there have been condemnation and sale. There must have been other costs besides the district attorney's fees paid by the marshal. He does not explain why this alone is left unsettled.

" Bill of costs United States *vs.* schooner Renaissance and cargo, (prize,) $533 35. B

" In this case it appears that there was no final condemnation, the property having been restored upon an appeal to the circuit court.

The costs, therefore, could not be paid out of the proceeds, and there is no fund out of which the department can pay them.

"Bill of costs United States *vs.* Joseph Bell et al., timber deposited, $6 70. B

"Bill of costs United States *vs.* J. Baldwin and J. A. Rogers, contract, lot of timber, timber deposited, $666. B

"Marshal's commissions, $1 96.

"In relation to these timber cases, &c., it is presumed that all necessary information can be obtained at the office of the Solicitor of the Treasury.

"So far as this department has any control over the account of Mr. Wagner, it will be settled; and it requests that the portion of it now referred to your office, and amounting to $1,247 61, may receive early attention. The balance of $114 will be paid by the Fourth Auditor.

"Very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Hon. ELISHA WHITTLESEY,
First Comptroller."

With this letter were transmitted the vouchers for the amounts referred to in it. The items in the above letter which I have marked B, it will be perceived, are the identical same which were suspended as aforesaid, and which I have marked A in the preceding extract from the differences, made upon the aforesaid adjustment. The two items of $17 each, in the letter, it is probable, form portion of the item of $68, or of $102, in the extract of differences. The item of $5, charged in case of J. Baldwin and J. A. Rogers, named in the letter, does not appear to have heretofore been before the accounting officers. As the aforesaid adjustment, No. 103,451, was revised in the Comptroller's office, January 4, 1851, and there are pencil notes on some of the vouchers transmitted with the Secretary's letter, which were made in this office before the receipt of his letter, it is evident that the claims were submitted to him subsequently to the action of the accounting officers upon them.

The Secretary expresses the opinion that the vouchers named in his letter are chargeable to the judiciary fund. I do not concur with him entirely.

First, in respect to the seizures of war. Where they are condemned as prizes of war, the rule seems to be that all necessary expenses incurred in bringing them into the jurisdiction of the proper court, and all costs and charges incident to adjudication which are on the part of the libellants, are payable out of the proceeds of such prizes; but that such portions of them as grow out of the interposition of the claimants, they would be held responsible to refund to the libellants.

Where they are not condemned, but restored to the claimants, and justifiable cause of seizure should exist, then it would be in the power of the court to mulct them in the full amount of the costs and expenses, as a punishment for the neglect of those precautions pointed out in the laws of this country, which would have afforded them immunity from molestation or harm from the hands of this government; or if the court should not deem it consistent with justice to impose

the whole or any part of the libellant's costs and expenses upon the claimants, then, upon its certificate of probable cause, the United States would be responsible for so much as should not be taxed against the claimants. In case the property should be restored, and probable cause refused to be certified by the court, then the captors would have to be looked to for the expenses incurred in bringing in, and the costs growing out of the libel. And the claimants would have, in the first place, to pay the costs of the defence, and seek restitution from the captors; they would also have an action in damages for trespass against the captors.

In the event, however, of any charges growing out of seizures of war, and adjudication upon them being raised against the United States, I do not think that the judiciary fund would be applicable to their payment; but that the proper fund to resort to would be that appropriated to defray the expenses of the war. Or, if from any cause such fund should not be existent, then the legislation of Congress would have to supply the needful.

The judiciary appropriation is based upon estimates for such expenses of judicial proceedings as arise in the ordinary and peaceful condition of things, and is designed only to defray these. Those which the extraordinary exigencies of war bring about must be otherwise provided for.

In respect to the cases before me, that of the schooner Renaissance and cargo, alone, appears not to have been condemned. It therefore is only to be considered. The costs in the others cannot be charged against the United States. Then, as to the Renaissance case, no certificate of probable cause has been presented; there is nothing to show that the court exempted the claimants and the captors, or either of them, from costs; and I presume that the balance of the appropriation which was made by the act of 13th May, 1846, for the purpose of "prosecuting the war to a speedy and successful termination," if there was any, has long since passed to the "surplus fund." Under these circumstances, it seems to me that the bill claimed cannot be allowed without the intervention of Congress—at least, that the accounting officers have no authority to allow it.

The next item of importance which I shall consider is the $666, the amount of the marshal's bill in the suit against a "lot of timber." It contains a charge for "monition, $10," which I think not warranted by any law. A charge for amount "paid keeping of said timber from the day of sequestration, 16th June, 1847, to 29th January, 1848, inclusive, 228 days at $2 50 per day..... $570 00
and for mileage of keeper, 400 miles..... 40 00

The charge of $570 is receipted for by "John Travis." There is no evidence that he was paid the mileage. The suit appears to have been dismissed on the 29th February, 1848, one month after the last day included in the charge for keeping. There is nothing shown respecting the timber during this month, whether it was continued and secured in the custody of the law, or was rescued or abandoned to chances, or in any other circumstances, does not appear. And as respects the keeping, no explanation is made as to the necessity of such an expense being incurred. Charges of this description should be

accompanied with a presentation of all the circumstances that were supposed to involve the necessity of the expense; and to justify the allowance, it should be made evident that it was the consequence of a precaution which fidelity to the purposes of justice required. It seems to me that the expense might have been avoided.

The suit, it appears, was brought at the instance of John Claiborne, agent of the Navy Department for the preservation of live-oak timber. [See district attorney's letter of June 5th, 1847, on file in Solicitor's office.] Suit was tried and verdict rendered for defendant.—[See district attorney's letter of January 30th, 1848, on file in Solicitor's office, copy of which is herewith presented.] Further proceedings discontinued by instructions from Secretary of Navy. [See district attorney's report of June 30th, 1848.]

A letter of Claiborne to the Secretary of the Navy, a letter of the Secretary to him, copies of which, marked respectively A and B, are hereto attached; and the letter of the district attorney of 30th January, 1848, above referred to, will give a knowledge of the case.

Respectfully submitted,

J. M. RAMSEY,
September 29, 1853.

Hon. E. WHITTLESEY,
Comptroller.

A.

NEW ORLEANS, *January* 19, 1848.

SIR: The trial of John P. Hickey, for trespass on the public lands in the parish of St. Mary, Louisiana, has resulted in his being acquitted. The verdict of the jury was a matter of great and unconcealed surprise to the court, as well as to the district attorney, as the evidence was considered conclusive against the accused. It seems that the jury were unwilling to convict him upon the grounds that there was no proof that he had actually been seen with an axe cutting timber, nor heard to order others to do so; and that it was, moreover, testified by Messrs. Deal & Vaughn that the timber was intended to be used in the construction of a seventy-four for the navy, and that they were sub-contractors for the supply of timber for the vessel. There was testimony that Hickey had remained on the land only long enough for the timber to be cut by the hands employed by Deal & Vaughn, and that he had told some of the witnesses that so soon as he was paid for the live oak he would leave the place, and actually did so, coming to this city to seek work as a tailor. It was also shown to the jury that under the 5th section of the act of September 4, 1841, under which Hickey claimed the land as pre-emptor, no pre-emption rights were to be allowed after the breaking out of hostilities between this and any other country; and that the United States, being engaged in a war with Mexico since May, 1846, no register could grant a pre-emption certificate after that date, nor could any settler acquire any pre-emption right to any part of the public domain under

the terms of the law. In the face of this array of testimony and law, an intelligent jury, composed of residents of New Orleans, acquitted the accused, after a consultation of not more than *two minutes*. This verdict is a matter of astonishment to me, as I had taken every care to procure full and sufficient evidence to insure conviction in the cases of Doss and Hickey, and my confidence of success was shared by the district attorney. Mr. Durant thinks that every attempt to reclaim the timber from Deal & Vaughn, the parties in possession when the seizure was made, would result only in incurring additional costs to the department. I will therefore take an obligation from those parties for the delivery of all the timber to the Bureau of Construction and Repair, should the head of that bureau elect to take it, the delivery to take place upon such terms and at such point as the parties and the bureau may agree upon. In a conversation with Messrs. Deal & Vaughn, some days since, they expressed their willingness to deliver the timber to the department on such conditions as they had already made known to Commodore Skinner. Every day's exposure must injure the timber, which, on my examination, appeared for the most part sound and well fitted for naval uses; and I therefore make the arrangement with Deal & Vaughn the more readily, as I am convinced that the interests of the department will be served by its being carried out without further delay. The case against Joseph E. Bell is set down for trial on the 15th February, and I trust that it will have a different termination from that of Hickey. Doss has fled to Texas, and I have not been able to obtain any information as to his whereabouts in that State.

The result of the trial of Hickey induces me respectfully to advise that the Secretary of the Navy should ask of Congress the passage of a law by which settlers on public lands, upon which live oak, red cedar, or white cypress may grow, should be prohibited, for a limited time after their settlement might begin—say two years—from cutting any more of said timber than should be actually necessary for building or cultivation; and that should any settler sell any such timber within the period limited, the proceeds thereof should become wholly the property of the United States. Such a law would tend more than any other measure that has yet been adopted to prevent the sale or destruction of these valuable timbers.

I am, sir, respectfully, your obedient servant,

JOHN CLAIBORNE,
Live Oak Agent.

JOSEPH SMITH, Esq., *U. S. N.*,
Chief of Bureau of Yards and Docks, Washington City.

B.

NAVY DEPARTMENT, *February* 8, 1848.

SIR: Your report to the Bureau of Yards and Docks, under date of the 19th January ultimo, has been received and transmitted to this department. Such is the importance of the point ruled by the court

in the case against Hickey, and the consequences which must result if the act of 1841 shall be considered as suspended by the war with Mexico, that I have felt it to be my duty to lay the subject before the President. With habitual respect for the opinions of the courts, I cannot concur in the construction given by the court in this place. The fifth section of the act clearly was intended to apply to those sections which provide for the distribution of the proceeds of the sales of the public lands, and to suspend this system in time of war with a foreign nation. The object certainly was, that the revenues from this source should all remain in the treasury for common defence during the period of war. Superadded to the sections authorizing distribution, are those which establish the systems of pre-emptions, by which settlers who are unable at the time of entering on the public lands to make payment, but who declaring their purpose to buy, and making special improvements, are permitted to occupy a fractional subdivision for twelve months, and then purchase in preference to any others. This system was intended and is believed to facilitate the sales of the public lands, and of course increase the revenue arising. It could not have been the intention of Congress to have suspended this system, producing such results during the existence of war, when revenue was required for the public purpose of carrying on the war; no such construction has been placed on the act by the Executive, by whom sales of the public lands have been encouraged in every form, whether by public sale, private entry, or pre-emption; and the acts passed by Congress since the declaration of the present war, exempting lands in the occupation of settlers from location in satisfaction of soldiers' bounty lands, show that it was not supposed by Congress that the pre-emption system is suspended. As doubts have been created on the subject by the decision of the court in Hickey's case, Congress will act on the question; and in the mean time the President directs me to instruct you not to institute or prosecute proceedings against actual settlers claiming pre-emptions on declarations made since the commencement of the war with Mexico.

In the case of Hickey, and perhaps in others, you appear to have treated as trespassers on the public lands persons who have taken possession with declaration of intention to improve and purchase as pre-emptioners, on the ground that the steps were not taken in good faith, but with the purpose of cutting and removing timber from the public lands in fraud of the law. The act of 1841 contemplates the settler as unable to pay for the land at the time of settlement, and not only acknowledges his right to exercise acts of ownership to aid him in paying the minimum price at the end of the term of twelve months, but makes improvement, by clearing a portion of the land, a duty which he must perform. In the case of lands not specially reserved for naval purposes, the question of the right of the settler to perfect his title belongs to the Treasury Department; and if the proof is satisfactory to the officers acting under that department, the purchase money received by them, and a certificate or patent issued, it is not only not the province of the Navy Department or its agents to question the validity of the title, but I have no doubt that the right relates back to the date of the declaration, and legalizes *all* interme-

diate acts of ownership in cutting and selling timber, or in any other manner treating the land as absolutely the property of the settler; while a fraudulent declaration, without the intent to purchase, does not confer the right so to use. It is always difficult to determine the *quo animo*, and proceedings founded on the belief that the settlement is not in good faith ought to be adopted with extreme caution. When the act of 1831 passed, all settlers on the public lands without payment were trespassers. By the act of 1841 they cease to be so, and inducements are held out to the poor man to settle, improve, and cultivate, that he may be able by his labor to pay for his home.

If you have seized timber cut from public land not reserved from sale, or instituted prosecutions for trespasses in cutting it from lands claimed by a settler, with a declared purpose of becoming a pre-emptioner, and the settler shall have been on the land at the date of the prosecution, his time of payment unexpired, or shall have received at the land office a certificate of payment before trial, entitling him to a patent, you will have the prosecution dismissed, and the timber restored; and if judgments shall have been rendered in such cases, you will suspend proceedings to enforce them, and report them to the department, with copies of the judgments.

Be pleased to acknowledge this letter on its receipt.

I am, sir, very respectfully, your obedient servant,

J. Y. MASON

JOHN CLAIBORNE, Esq.,
Live Oak Agent, &c., New Orleans.

NAVY DEPARTMENT,
December 5, 1853.

SIR: Your letter of the 11th ult., returning "certain accounts of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana," with a report upon the subject, has been received.

The accounts presented being for expenses alleged to have been incurred by the marshal in suits brought directly by and in behalf of the United States, the department was of the opinion that, if properly vouched, and approved by the United States court under whose order they were incurred, and not otherwise provided for, they were chargeable to the appropriation for "defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States, and for the safekeeping of prisoners."

There is no fund under the control of this department out of which the bills can be paid; and as they appear to have been examined and approved by the judge of the United States court for the eastern district of Louisiana, they are respectfully returned to you for your final decision, which you are requested to communicate to the claimant.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. ELISHA WHITTLESEY,
First Comptroller, Treasury Department.

NAVY DEPARTMENT,
December 5, 1853.

SIR: Your letter of the 15th ultimo, returning "certain accounts of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana," with a report upon the subject, has been received.

The accounts presented being for expenses alleged to have been incurred by the marshal in suits brought directly by and in behalf of the United States, the department was of opinion that, if properly vouched and approved by the United States court, under whose orders they were incurred, and not otherwise provided for, they were chargeable to the appropriation for "defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States, and for the safekeeping of prisoners."

There is no fund under the control of this department out of which the bills can be paid; and as they appear to have been examined and approved by the judge of the United States court for the eastern district of Louisiana, they are respectfully returned to you for your final decision, which you are requested to communicate to the claimant.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. ELISHA WHITTLESEY,
First Comptroller of the Treasury.

DEPARTMENT OF THE INTERIOR,
Washington, July 30, 1856.

SIR: Your note of the 21st instant, enclosing the letter of W. F. Wagner, esq., ex-marshal for the eastern district of Louisiana, dated the 3d instant, calling your attention to an old claim of his, which he alleges, had been a long time before this and the Navy Department, was received on the 22d instant.

No evidence appearing upon the records of this department that the claim referred to had ever been here, inquiry was made at the Navy Department, and it was ascertained that the claim had been adjusted so far as that department had the power to do so; payment made accordingly, and the papers referred to the First Comptroller of the Treasury, in order that the balance of the account, $1,247 01, or such portion as might be deemed payable, might be paid out of the judiciary fund.

Recourse was then had to the papers themselves, which were kindly loaned by the Comptroller for inspection.

Upon a cursory examination of them, it is believed, that if the action of the Navy Department is correct, Mr. Wagner cannot be relieved without the intervention of Congress; none of the accounts being, as the Comptroller alleges, of such a character as to warrant their payment out of the judiciary fund.

The papers will be immediately returned to the Comptroller, where they can be inspected by you, and you can take such action as may be deemed proper.

Enclosed herewith, I send you the note of the chief clerk of the

Navy Department on the subject, and also copy of a letter from the Secretary of that department to the First Comptroller, dated the 5th of December, 1853. Mr. Wagner's letter is herewith returned, as requested.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. MILES TAYLOR,
House of Representatives.

NAVY DEPARTMENT, *July* 24, 1856.

DEAR SIR: The letter of the Hon. M. Taylor and its enclosure. transmitted with your note of the 22d, are herewith returned.

The account to which Mr. Wagner refers was submitted to this department in May, 1852, and, so far as it contained charges against funds under the control of the department, was settled by the payment of $114, mentioned in Mr. Wagner's letter. The residue of his claim, with the vouchers, was referred for settlement to the First Comptroller, who returned the papers to the department, with his objections; but as the accounts of marshals are not finally adjusted at this department, and all charges on the account for which the department was liable, or could pay, had been allowed, it remained for the Comptroller finally to decide whether the residue of Mr. Wagner's claim could be paid out of the appropriation for "defraying the expense of suits in which the United States are concerned," &c. The papers were accordingly again transmitted to him, with a letter, of which a copy is enclosed. His final action in the case is not known to the department.

I am, respectfully, &c.,

CHAS. W. WELSH.

CHAS. S. FRAILEY, Esq.,
Department of the Interior.

TREASURY DEPARTMENT,
Comptroller's Office, August 13, 1856.

SIR: I herewith transmit to you the copies of papers connected with an account of William F. Wagner, esq., late marshal for the eastern district of Louisiana, requested by your letter of the 11th instant, which came to hand yesterday.

Yours respectfully,

ELISHA WHITTLESEY,
Comptroller.

Hon. MILES TAYLOR,
House of Representatives.